

(2021) 01 SHI CK 0229
In the High Court Of Himachal Pradesh
Case No : CR.MMO No.419 Of 2020

Nikhil Guleria And Ors

APPELLANT

Vs

State Of H.P. And Anr

RESPONDENT

Date of Decision : 06-01-2021

Acts Referred:

Indian Penal Code, 1860 — Sections 120B, 147, 148, 149, 307, 323, 382, 420, 427, 452, 467, 468, 471, 506
Code Of Criminal Procedure, 1973 — Section 173, 320, 437, 482

Citation : (2021) 01 SHI CK 0229

Hon'ble Judges : Sandeep Sharma, J

Bench : Single Bench

Advocate : Rajesh Kumar, Sudhir Bhatnagar, Shalu Sharma

Final Decision : Allowed

Judgement

Sandeep Sharma, J

Through Video Conferencing

1. By way of instant petition, prayer has been made on behalf of the petitioners for quashing of FIR No. 86/20 dated 6.10.2020, under Sections 147,

148, 149, 452, 323, 382, 427 and 506 of IPC, registered with Police Station Haripur, District Kangra, H.P., as well as consequent proceedings, if any,

pending before the court below, on the basis of compromise/amicable settlement arrived inter-se parties.

2. Averments contained in the petition, which is duly supported by an affidavit, reveal that FIR sought to be quashed in the instant proceedings came to

be lodged at the behest of the respondent No.2-complainant (herein after referred to as "the complainant"), who alleged that on 6.10.2020, the

petitioners equipped with dangerous weapons entered his shop and started

giving him beatings. Respondent No.2 also alleged that the petitioners besides stealing sum of Rs. 92,000/- from the shop also damaged his property and as such, appropriate action in accordance with law be taken against him. In the aforesaid background, though initially case under Sections 147, 148, 149, 452, 323, 382, 427 and 506 of IPC came to be registered against the petitioners, but during the investigation, respondent complainant informed the police that sum of Rs. 92,000/-allegedly stolen by the petitioners, has been found in the shop itself and as such, police while filing final challan under Section 173 Cr.PC dropped Sections 382 and 452 of IPC. After completion of investigation, police presented challan in the competent court of law, but before same could be taken to its logical end, parties to the lis have resolved to settle their dispute amicably inter-se them by way of compromise placed on record.

3. On 4.1.2021, this Court having taken note of the averments contained in the compromise deemed it necessary to cause presence of parties to the lis, especially, complainant at whose behest FIR sought to be quashed in the instant proceedings came to be lodged, so that correctness and genuineness of the compromise placed on record is ascertained.

4. In terms of aforesaid order, complainant namely Vishal has come present and is duly represented by Ms. Shalu Sharma, Advocate. Complainant states on oath that he of his own volition and without there being any external pressure, have entered into compromise with the petitioners-accused, whereby both the parties have resolved to settle their dispute amicably and he shall have no objection in case FIR sought to be quashed in the instant proceedings as well as consequent proceedings, if any, pending before the court below, are ordered to be quashed and set-aside and petitioners-accused are acquitted. He further stated that since sum of Rs. 92,000/- was found in the shop itself and he has been adequately compensated by the petitioners qua the damage caused in the alleged incident, he with a view to maintain cordial relations with the petitioners, who otherwise are his neighbours, has entered into compromise, which bears his signatures. Such statement made on oath is taken on record.

5. Mr. Sudhir Bhatnagar, learned Additional Advocate General, having heard aforesaid statement made by the complainant states that in view of the amicable settlement arrived inter-se parties, no fruitful purpose would be served

in case FIR sought to be quashed as well as consequent proceedings

pending before the court below are allowed to sustain and as such, prayer made in the instant petition may be accepted.

6. Since the petition has been filed under Section 482 Cr.PC, this Court deems it fit to consider the present petition in the light of the judgment passed

by Honâ??ble Apex Court in *Narinder Singh and others versus State of Punjab and another* (2014)6 Supreme Court Cases 466, whereby

Honâ??ble Apex Court has formulated guidelines for accepting the settlement and quashing the proceedings or refusing to accept the settlement with

direction to continue with the criminal proceedings. Perusal of judgment referred above clearly depicts that in para 29.1, Honâ??ble Apex Court has

returned the findings that power conferred under Section 482 of the Code is to be distinguished from the power which lies in the Court to compound

the offences under section 320 of the Code. No doubt, under section 482 of the Code, the High Court has inherent power to quash the criminal

proceedings even in those cases which are not compoundable, where the parties have settled the matter between themselves. However, this power is

to be exercised sparingly and with great caution. Para Nos. 29 to 29.7 of the judgment are reproduced as under:-

â??29. In view of the aforesaid discussion, we sum up and lay down the following principles by which the High Court would be guided in giving

adequate treatment to the settlement between the parties and exercising its power under Section 482 of the Code while accepting the settlement and

quashing the proceedings or refusing to accept the settlement with direction to continue with the criminal proceedings:

29.1Power conferred under Section 482 of the Code is to be distinguished from the power which lies in the Court to compound the offences under

Section 320 of the Code. No doubt, under Section 482 of the Code, the High Court has inherent power to quash the criminal proceedings even in those

cases which are not compoundable, where the parties have settled the matter between themselves. However, this power is to be exercised sparingly

and with caution.

29.2. When the parties have reached the settlement and on that basis petition for quashing the criminal proceedings is filed, the guiding factor in such

cases would be to secure:

(i) ends of justice, or

(ii) to prevent abuse of the process of any Court.

While exercising the power under Section 482 Cr.P.C the High Court is to form an opinion on either of the aforesaid two objectives.

29.3. Such a power is not to be exercised in those prosecutions which involve heinous and serious offences of mental depravity or offences like murder,

rape, dacoity, etc. Such offences are not private in nature and have a serious impact on society. Similarly, for offences alleged to have been

committed under special statute like the Prevention of Corruption Act or the offences committed by Public Servants while working in that capacity are

not to be quashed merely on the basis of compromise between the victim and the offender.

29.4. On the other, those criminal cases having overwhelmingly and predominantly civil character, particularly those arising out of commercial

transactions or arising out of matrimonial relationship or family disputes should be quashed when the parties have resolved their entire disputes among

themselves.

29.5. While exercising its powers, the High Court is to examine as to whether the possibility of conviction is remote and bleak and continuation of

criminal cases would put the accused to great oppression and prejudice and extreme injustice would be caused to him by not quashing the criminal

cases.

29.6. Offences under Section 307 IPC would fall in the category of heinous and serious offences and therefore is to be generally treated as crime

against the society and not against the individual alone. However, the High Court would not rest its decision merely because there is a mention of

Section 307 IPC in the FIR or the charge is framed under this provision. It would be open to the High Court to examine as to whether incorporation of

Section 307 IPC is there for the sake of it or the prosecution has collected sufficient evidence, which if proved, would lead to proving the charge under

Section 307 IPC. For this purpose, it would be open to the High Court to go by the nature of injury sustained, whether such injury is inflicted on the

vital/delegate parts of the body, nature of weapons used etc. Medical report in respect of injuries suffered by the victim can generally be the guiding

factor. On the basis of this prima facie analysis, the High Court can examine as to

whether there is a strong possibility of conviction or the chances of conviction are remote and bleak. In the former case it can refuse to accept the settlement and quash the criminal proceedings whereas in the later case it would be permissible for the High Court to accept the plea compounding the offence based on complete settlement between the parties. At this stage, the Court can also be swayed by the fact that the settlement between the parties is going to result in harmony between them which may improve their future relationship.

29.7. While deciding whether to exercise its power under Section 482 of the Code or not, timings of settlement play a crucial role. Those cases where the settlement is arrived at immediately after the alleged commission of offence and the matter is still under investigation, the High Court may be liberal in accepting the settlement to quash the criminal proceedings/investigation. It is because of the reason that at this stage the investigation is still on and even the charge sheet has not been filed. Likewise, those cases where the charge is framed but the evidence is yet to start or the evidence is still at infancy stage, the High Court can show benevolence in exercising its powers favourably, but after prima facie assessment of the circumstances/material mentioned above. On the other hand, where the prosecution evidence is almost complete or after the conclusion of the evidence the matter is at the stage of argument, normally the High Court should refrain from exercising its power under Section 482 of the Code, as in such cases the trial court would be in a position to decide the case finally on merits and to come a conclusion as to whether the offence under Section 307 IPC is committed or not. Similarly, in those cases where the conviction is already recorded by the trial court and the matter is at the appellate stage before the High Court, mere compromise between the parties would not be a ground to accept the same resulting in acquittal of the offender who has already been convicted by the trial court. Here charge is proved under Section 307 IPC and conviction is already recorded of a heinous crime and, therefore, there is no question of sparing a convict found guilty of such a crime??.

â??32. We find from the impugned order that the sole reason which weighed with the High Court in refusing to accept the settlement between the parties was the nature of injuries. If we go by that factor alone, normally we

would tend to agree with the High Court's approach. However, as pointed out hereinafter, some other attendant and inseparable circumstances also need to be kept in mind which compels us to take a different view.

33. We have gone through the FIR as well which was recorded on the basis of statement of the complainant/victim. It gives an indication that the

complainant was attacked allegedly by the accused persons because of some previous dispute between the parties, though nature of dispute, etc. is not

stated in detail. However, a very pertinent statement appears on record viz. 'respectable persons have been trying for a compromise up till now,

which could not be finalized.' This becomes an important aspect. It appears that there have been some disputes which led to the aforesaid purported

attack by the accused on the complainant. In this context when we find that the elders of the village, including Sarpanch, intervened in the matter and

the parties have not only buried their hatchet but have decided to live peacefully in future, this becomes an important consideration. The evidence is

yet to be led in the Court. It has not even started. In view of compromise between parties, there is a minimal chance of the witnesses coming forward

in support of the prosecution case. Even though nature of injuries can still be established by producing the doctor as witness who conducted medical

examination, it may become difficult to prove as to who caused these injuries. The chances of conviction, therefore, appear to be remote. It would,

therefore, be unnecessary to drag these proceedings. We, taking all these factors into consideration cumulatively, are of the opinion that the

compromise between the parties be accepted and the criminal proceedings arising out of FIR No.121 dated 14.7.2010 registered with police station

Lopoke, District Amritsar Rural be quashed. We order accordingly.'

7. The Hon'ble Apex Court in case Gian Singh v. State of Punjab and anr. (2012) 10 SCC 303 has held that power of the High Court in quashing

of the criminal proceedings or FIR or complaint in exercise of its inherent power is distinct and different from the power of a Criminal Court for

compounding offences under Section 320 Cr.PC. Even in the judgment passed in Narinder Singh's case, the Hon'ble Apex Court has held

that while exercising inherent power under Section 482 Cr.PC the Court must have due regard to the nature and gravity of the crime and its social

impact and it cautioned the Courts not to exercise the power for quashing

proceedings in heinous and serious offences of mental depravity, murder, rape, dacoity etc. However subsequently, the Honâ??ble Apex Court in *Dimpey Gujral and Ors. vs. Union Territory through Administrator, UT, Chandigarh and Ors.* (2013) 11 SCC 497 has also held as under:-

â??7. In certain decisions of this Court in view of the settlement arrived at by the parties, this Court quashed the FIRs though some of the offences were non-compoundable. A two Judgesâ?? Bench of this court doubted the correctness of those decisions. Learned Judges felt that in those decisions, this court had permitted compounding of non-compoundable offences. The said issue was, therefore, referred to a larger bench.

The larger Bench in *Gian Singh v. State of Punjab* (2012) 10 SCC 303 considered the relevant provisions of the Code and the judgments of this court and concluded as under: (SCC pp. 342-43, para 61)

61. The position that emerges from the above discussion can be summarised thus: the power of the High Court in quashing a criminal

proceeding or FIR or complaint in exercise of its inherent jurisdiction is distinct and different from the power given to a criminal court for

compounding the offences under Section 320 of the Code. Inherent power is of wide plenitude with no statutory limitation but it has to be

exercised in accord with the guideline engrafted in such power viz; (i) to secure the ends of justice or (ii) to prevent abuse of the process of

any Court. In what cases power to quash the criminal proceeding or complaint or F.I.R may be exercised where the offender and victim

have settled their dispute would depend on the facts and circumstances of each case and no category can be prescribed. However, before

exercise of such power, the High Court must have due regard to the nature and gravity of the crime. Heinous and serious offences of mental

depravity or offences like murder, rape, dacoity, etc. cannot be fittingly quashed even though the victim or victimâ??s family and the

offender have settled the dispute. Such offences are not private in nature and have serious impact on society. Similarly, any compromise

between the victim and offender in relation to the offences under special statutes like Prevention of Corruption Act or the offences committed

by public servants while working in that capacity etc; cannot provide for any

basis for quashing criminal proceedings involving such offences. But the criminal cases having overwhelmingly and pre-dominantly civil flavour stand on different footing for the purposes of quashing, particularly the offences arising from commercial, financial, mercantile, civil, partnership or such like transactions or the offences arising out of matrimony relating to dowry, etc. or the family disputes where the wrong is basically private or personal in nature and the parties have resolved their entire dispute. In this category of cases, High Court may quash criminal proceedings if in its view, because of the compromise between the offender and victim, the possibility of conviction is remote and bleak and continuation of criminal case would put accused to great oppression and prejudice and extreme injustice would be caused to him by not quashing the criminal case despite full and complete settlement and compromise with the victim. In other words, the High Court must consider whether it would be unfair or contrary to the interest of justice to continue with the criminal proceeding or continuation of the criminal proceeding would tantamount to abuse of process of law despite settlement and compromise between the victim and wrongdoer and whether to secure the ends of justice, it is appropriate that criminal case is put to an end and if the answer to the above question(s) is in affirmative, the High Court shall be well within its jurisdiction to quash the criminal proceeding.â?? (emphasis supplied)

8. In the light of the above observations of this court in Gian Singh, we feel that this is a case where the continuation of criminal proceedings would tantamount to abuse of process of law because the alleged offences are not heinous offences showing extreme depravity nor are they against the society. They are offences of a personal nature and burying them would bring about peace and amity between the two sides. In the circumstances of the case, FIR No. 163 dated 26.10.2006 registered under Section 147, 148, 149, 323, 307, 452 and 506 of the IPC at Police Station Sector 3, Chandigarh and all consequential proceedings arising there from including the final report presented under Section 173 of the Code and charges framed by the trial Court are hereby quashed.

8. Recently Honâ??ble Apex Court in its latest judgment dated 4th October, 2017,

titled as Parbatbhai Aahir @ Parbatbhai Bhimsinhbhai Karmur and

others versus State of Gujarat and Another, passed in Criminal Appeal No.1723 of 2017 arising out of SLP(Crl) No.9549 of 2016, reiterated the

principles/ parameters laid down in Narinder Singh's case supra for accepting the settlement and quashing the proceedings. It would be profitable

to reproduce para No. 13 to 15 of the judgment herein:

13. The same principle was followed in Central Bureau of Investigation v. Maninder Singh (2016) 1 SCC 389 by a bench of two learned

Judges of this Court. In that case, the High Court had, in the exercise of its inherent power under Section 482 quashed proceedings

under Sections 420, 467, 468 and 471 read with Section 120-B of the Penal Code. While allowing the appeal filed by the Central Bureau

of Investigation Mr Justice Dipak Misra (as the learned Chief Justice then was) observed that the case involved allegations of forgery

of documents to embezzle the funds of the bank. In such a situation, the fact that the dispute had been settled with the bank would not

justify a recourse to the power under Section 482:

In economic offences Court must not only keep in view that money has been paid to the bank which has been defrauded but also

the society at large. It is not a case of simple assault or a theft of a trivial amount; but the offence with which we are concerned is well

planned and was committed with a deliberate design with an eye of personal profit regardless of consequence to the society at large. To

quash the proceeding merely on the ground that the accused has settled the amount with the bank would be a misplaced sympathy. If

the prosecution against the economic offenders are not allowed to continue, the entire community is aggrieved.

14. In a subsequent decision in >State of Tamil Nadu v R Vasanthi Stanley (2016) 1 SCC 376, the court rejected the submission that the

first respondent was a woman who was following the command of her husband and had signed certain documents without being

aware of the nature of the fraud which was being perpetrated on the bank. Rejecting the submission, this Court held that:

... Lack of awareness, knowledge or intent is neither to be considered nor accepted in economic offences. The submission

assiduously presented on gender leaves us unimpressed. An offence under the criminal law is an offence and it does not depend upon

the gender of an accused. True it is, there are certain provisions in Code of Criminal Procedure relating to exercise of jurisdiction

Under Section 437, etc. therein but that altogether pertains to a different sphere. A person committing a murder or getting involved in

a financial scam or forgery of documents, cannot claim discharge or acquittal on the ground of her gender as that is neither

constitutionally nor statutorily a valid argument. The offence is gender neutral in this case. We say no more on this score.â

âA grave criminal offence or serious economic offence or for that matter the offence that has the potentiality to create a dent in

the financial health of the institutions, is not to be quashed on the ground that there is delay in trial or the principle that when the

matter has been settled it should be quashed to avoid the load on the system.â

15. The broad principles which emerge from the precedents on the subject may be summarized in the following propositions:

(i) Section 482 preserves the inherent powers of the High Court to prevent an abuse of the process of any court or to secure the ends

of justice. The provision does not confer new powers. It only recognizes and preserves powers which inhere in the High Court;

(ii) The invocation of the jurisdiction of the High Court to quash a First Information Report or a criminal proceeding on the ground that

a settlement has been arrived at between the offender and the victim is not the same as the invocation of jurisdiction for the purpose of

compounding an offence. While compounding an offence, the power of the court is governed by the provisions of Section 320 of the

Code of Criminal Procedure, 1973. The power to quash under Section 482 is attracted even if the offence is non-compoundable.

(iii) In forming an opinion whether a criminal proceeding or complaint should be quashed in exercise of its jurisdiction under Section

482, the High Court must evaluate whether the ends of justice would justify the exercise of the inherent power;

(iv) While the inherent power of the High Court has a wide ambit and plenitude it has to be exercised; (i) to secure the ends of justice

or (ii) to prevent an abuse of the process of any court;

(v) The decision as to whether a complaint or First Information Report should be quashed on the ground that the offender and victim

have settled the dispute, revolves ultimately on the facts and circumstances of each case and no exhaustive elaboration of principles

can be formulated;

(vi) In the exercise of the power under Section 482 and while dealing with a plea that the dispute has been settled, the High Court

must have due regard to the nature and gravity of the offence. Heinous and serious offences involving mental depravity or offences

such as murder, rape and dacoity cannot appropriately be quashed though the victim or the family of the victim have settled the

dispute. Such offences are, truly speaking, not private in nature but have a serious impact upon society. The decision to continue with

the trial in such cases is founded on the overriding element of public interest in punishing persons for serious offences;

(vii) As distinguished from serious offences, there may be criminal cases which have an overwhelming or predominant element of a

civil dispute. They stand on a distinct footing in so far as the exercise of the inherent power to quash is concerned;

(viii) Criminal cases involving offences which arise from commercial, financial, mercantile, partnership or similar transactions with an

essentially civil flavour may in appropriate situations fall for quashing where parties have settled the dispute;

(ix) In such a case, the High Court may quash the criminal proceeding if in view of the compromise between the disputants, the

possibility of a conviction is remote and the continuation of a criminal proceeding would cause oppression and prejudice; and

(x) There is yet an exception to the principle set out in propositions (viii) and (ix) above. Economic offences involving the financial and

economic well-being of the state have implications which lie beyond the domain of a mere dispute between private disputants. The

High Court would be justified in declining to quash where the offender is involved in an activity akin to a financial or economic fraud or

misdemeanour. The consequences of the act complained of upon the financial or

economic system will weigh in the balance.

9. It is quite apparent from the aforesaid exposition of law that High Court has inherent power to quash criminal proceedings even in those cases

which are not compoundable, but such power is to be exercised sparingly and with great caution. In the judgments, referred hereinabove, Honâ??ble

Apex Court has categorically held that Court while exercising inherent power under Section 482 Cr.P.C., must have due regard to the nature and

gravity of offence sought to be compounded. Honâ??ble Apex Court has though held that heinous and serious offences of mental depravity, murder,

rape, dacoity etc. cannot appropriately be quashed though the victim or the family of the victim have settled the dispute, but it has also observed that

while exercising its powers, High Court is to examine as to whether the possibility of conviction is remote and bleak and continuation of criminal cases

would put the accused to great oppression and prejudice and extreme injustice would be caused to him by not quashing the criminal cases.

Honâ??ble Apex Court has further held that Court while exercising power under Section 482 Cr.P.C can also be swayed by the fact that settlement

between the parties is going to result in harmony between them which may improve their future relationship. Honâ??ble Apex Court in its judgment

rendered in State of Tamil Nadu supra, has reiterated that Section 482 preserves the inherent powers of the High Court to prevent an abuse of the

process of any court or to secure the ends of justice and has held that the power to quash under Section 482 is attracted even if the offence is non-

compoundable. In the aforesaid judgment Honâ??ble Apex Court has held that while forming an opinion whether a criminal proceedings or complaint

should be quashed in exercise of its jurisdiction under Section 482, the High Court must evaluate whether the ends of justice would justify the exercise

of the inherent power.

10. In the case at hand also, offences alleged to have been committed by the petitioners do not involve offences of moral turpitude or any

grave/heinous crime, rather same are petty offences, as such, this Court deems it appropriate to quash the FIR as well as consequential proceedings

thereto, especially keeping in view the fact that the petitioners and respondent No.2 have compromised the matter inter se, in which case,

possibility of conviction is remote and no fruitful purpose would be served in

continuing with the criminal proceedings.

11. Since the matter stands compromised between the parties and respondent No.2 is no more interested in pursuing the criminal proceedings against

the petitioners, no fruitful purpose would be served in case proceedings initiated at the behest of respondent No.2 are allowed to continue, as such,

prayer made in the petition at hand can be accepted.

12. Consequently, in view of the averments contained in the petition as well as the submissions having been made by the learned counsel for the

parties that the matter has been compromised, and keeping in mind the well settled proposition of law as well as the compromise being genuine, FIR

No. 86/20 dated 6.10.2020, under Sections 147, 148, 149, 452, 323, 382, 427 and 506 of IPC, registered with Police Station Haripur, District Kangra,

H.P., as well as consequent proceedings pending before the court below, are ordered to be quashed and set-aside.

13. The present petition is allowed in the aforesaid terms. Pending application(s), if any, also stands disposed of.

Copy dasti.